IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.4262 of 2006

Gram Panchayat, Pavashi — Petitioner
Vs.
Yeshwant V. Tavate & anr. — Respondents

Mr.C.G.Gavnekar for petitioner.
Mr.A.S.Khandeparkar, AGP for Resp.no.1.
Mr.A.H.Palekar, AGP for Resp.no.2.

CORAM: B.H.MARLAPALLE,J.

August 07, 2006.

P.C.

. Heard Mr.Gavnekar, the learned counsel for the petitioner. Rule. Mr.Khandeparkar waives service for Respondent No.1 and Respondent No.2 is not a necessary party, hence be deleted forthwith.

. The petitioner submitted an application before the Labour Court at Kolhapur in Reference (IDA) No.46 of 1999 praying for a preliminary issue as to whether the petitioner-Panchayat is an "Industry" within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. This application was filed on or about 22/1/2002 and the learned Judge of the Labour Court noted that in the earlier round before this Court i.e. in Writ Petition No.3926 of 2000 no such issue was agitated and, therefore, after this Court had

remanded the Reference for recording evidence, the application could not be entertained.

. Undoubtedly the issue raised by the petitioner will have to be decided as a preliminary issue but along with all other issues and after the parties adduce evidence before the Labour Court in the pending Reference and it appears that the learned Judge of the Labour Court was aware of this position in law. In these circumstances, it was not proper for the Labour Court to reject the application filed by the petitioner and the Labour Court could have framed the issue along with all other issues and decided the issue raised by the petitioner as a preliminary issue after the parties adduce evidence. Whether the petitioner would be called as a "marginal employer" as envisaged by the Supreme Court in the case of Bangalore Water Supply and Sewerage Board v. A. Rajappa **[AIR 1978 SC 548]** will have to be decided by adducing evidence. Hence the petition succeeds partly.

. In the premises, the petition is allowed and the impugned order dated 30/10/2002 is hereby quashed and set aside by restoring the petitioner's

application dated 22/1/2002 and marked as Exhibit C-54 is hereby restored to the file of the Labour Court. The learned Judge of the Labour Court will frame the preliminary issue as prayed for by the petitioner along with all other issues and decide the same after the parties adduce evidence. Trial of the Reference is hereby expedited.

. Rule made absolute accordingly with no order as to costs. Writ to go forthwith to the Labour Court.

(B.H.MARLAPALLE,J.)